IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

OP.No. 16688 of 2000(J)

PETITIONER:

THE COCHIN MALABAR ESTATES AND INDUSTRIES LIMITED,
MALABAR HOUSE, 56, BRISTOW ROAD, WILLINGDON
ISLAND, KOCHI-682 003. REPRESENTED BY
S.D. BHATTER, CHIEF EXECUTIVE.

BY ADV. SRI.JOSE JOSEPH

RESPONDENTS:
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1. THE STATE OF KERALA REPRESENTED BY
SECRETARY TO GOVERNMENT, TAXES (B) DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

2. THE ASSISTANT COMMISSIONER (ASSESSMENT)
SPECIAL CIRCLE (PRODUCE),
MATTANCHERRY.

BY SR.GOVERNMENT PLEADER SRI.MUHAMMED RAFIQ

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 08/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX.

PETITIONER'S EXHIBITS:

EXT.P1- TRUE COPY OF THE ORIGINAL ORDER OF ASSESSMENT UNDER THE CST ACT FOR THE YEAR 1988-89.

EXT.P2- TRUE COPY OF THE ORIGINAL ORDER OF ASSESSMENT UNDER THE CST ACT FOR THE YEAR 1989-90.

EXT.P3- TRUE COPY OF THE ORIGINALORDER OF ASSESSMENT UNDER THE CST ACT FOR THE YEAR 1990-91.

EXT.P4- TRUE COPY OF HTE ORIGINAL ORDER OF ASSESSMENT UNDER THE CST ACT FOR THE YEAR 1991-92.

EXT.P5- TRUE COPY OF THE ORIGINAL ORDER OF ASSESSMENT UNDER THE CST ACT FOR THE YEAR 1992-93.

EXT.P6- TRUE COPY OF HTE ORDER NO.A3-938/99 OF HTE DEPUTY COMMISSIONER, COMMERCIAL TAXES, MATTANCHERY.

EXT.P7- TRUE COPY OF THE ORDER OF THE SALES TAX APPELLATE TRIBUNAL, ADDITIONAL BENCH II ERNAKULAM IN T.A.NO.1122 TO 1126 OF 1999.

EXT.P8- TRUE COPY OF THE ASSESSMENT ORDER FOR THE YEAR 1988-89.

EXT.P9- TRUE COPY OF THE REVISED ASSESSMENT ORDER FOR THE YEAR 1989-90.

EXT.P10- TRUE COPY OF THE REVISED ASSESSMENT ORDER FOR THE YEAR 1990-91.

EXT.P11- TRUE COPY OF THE REVISED ASSESSMENT ORDER FOR THE YEAR 1991-92.

EXT.P12- TRUE COPY OF THE REVISED ASSESSMENT ORDER FOR THE YEAR 1992-93.

EXT.P13- TRUE COPY OF S.R.O.767/98.

H.L.DATTU, C.J. & K.T.SANKARAN, J.

O.P.No.16688 of 2000-J

Dated this the 8th day of August, 2007.

J U D G M E N T

H.L.Dattu, C.J.

The petitioner is a producer of raw rubber. It is also a dealer registered under the Kerala General Sales Tax Act 1963 and Central Sales Tax Act, 1956.

(2). In this original petition filed under Article 226 of the Constitution of India, the petitioner calls in question the validity or otherwise of the notification issued by the State Government in S.R.O.No.767/98 dated 28th August, 1998. The said notification is as under.

GOVERNMENT OF KERALA

Taxes (B) Department

NOTIFICATION

G.O.(P) No.122/98/TD Dated, Thiruvananthapuram,28th August, 1998.

S.R.O.No.767/98:--In exercise of the powers conferred by Section 10 of the Kerala General Sales Tax Act, 1963 (15 of 1963), the Government of Kerala, having considered it necessary int he public interest so to do, hereby make the following amendment to Notification I issued in G.O.(P) No.153/98 TD dated, the 3rd November, 1993 and published as S.R.O.No.1727/93 in the Kerala Gazette Extraordinary No.1120 dated, the 4th November, 1993 as subsequently amended, namely:--

AMENDMENT

In the said Notification in Schedule III, after serial No.40 and the entries against it, the following Serial No. and entries shall be added, namely:--

"41.	Dealers other than manufacturers and planters.	Part of the turnover being the element of cess payable under the Rubber Act, in the purchase turnover of rubber.	1. The rubber purchased was sold inter-state or transferred to the principal outside the State or to a branch outside not being a manufacturing unit of the consignor.

2. The exemption shall be in respect of goods purchased for the period upto and including 18th December, 1997.

3. Tax, if any, already paid shall not be refunded."

By order of the Governor,
VINOD RAI,
Principal Secretary to Government,

Explanatory note

(This does not form part of the notification, but is intended to indicate its general purport)

In **State of Kerala Vs. M.R.F.Limited**, (1998) (6) KTR 118 SC), the Honourable Supreme Court held, reversing the decision of the Honourable High Court of Kerala in **Deputy Commissioner (Law), Vs. Bata India Limited**, (1986) (62 STC-436), that rubber cess, even though it is paid by the manufacturers subsequent to their purchase of rubber, form part of the purchase value of rubber and so was includable in the purchase turnover of rubber. As such cess payable on rubber under the Rubber Act can be included in the sale price of rubber from the point of sale by the planter onwards, retrospectively. But in respect of traders in rubber, Government had not taken any steps so far to include the amount of cess payable as per the Rubber Act in the purchase turnover or in the sales turnover of such dealers/traders and so they were not anticipating any liability. The dealers had therefore no occasion at any time to believe that at some point of time they may be made liable for purchase tax on the rubber cess element. Government consider that immense hard-ship will be caused to such dealers/traders due to the implementation of the above decision with retrospective effect. Government have therefore decided to grant exemption in respect of the tax payable by traders (other than manufacturers and planters) on the part of the turnover of rubber being the element of cess payable under the Rubber Act, for the period prior to the pronouncement of the judgment of the Honourable Supreme Court and to collect purchase tax on the rubber cess element from the date of order of Supreme Court only.

The above notification is intended to achieve this object.

(3). The explanatory note added to the notification explains the purport of the notification.

(4). The object of the notification appears to be to apply the law declared by the Apex Court in the case of **State of Kerala Vs. Madras Rubber Factory Ltd**.{ (1998) 108 STC 583} is not made applicable to the traders in rubber retrospectively. However, it does not include the purchasers/manufacturers like the petitioner.

(5). Sri. Jose Joseph, learned counsel appearing for the assessee would contend that the notification so issued by the State Government is arbitrary and discriminatory and therefore, the same requires to be struck down by this court. In support of that contention, the learned counsel relies on certain observations made by the Apex Court. In our opinion, reference to those decisions may not be necessary for the purpose of the disposal of this original petition.

(6). The Supreme Court in the case of **State of Kerala Vs. Madras Rubber Factory Ltd**.{ (1998) 108 STC 583} was pleased to hold that rubber cess requires to be included in the purchase turnover for the purpose of purchase tax under the provisions of the Kerala General Sales Tax Act. This decision was rendered by the Apex Court by reversing the view of the Full Bench of this court in the case of **Madras Rubber Factory Limited Vs. State of Kerala** { (1989) 74 STC 56}.

(7). In order to come to the aid of the small traders, the State Government has issued the impugned notification. In the said notification a distinction is made between traders and producers/manufacturers. The

manufacturers and traders form a different class altogether. A producer/manufacturer cannot be treated similar to a trader. Keeping in view the capacity to pay by a dealer, the Government has thought it fit to exempt only the traders from the rigour of the decision of the Apex Court in **State of Kerala Vs. M.R.F.Limited**, (1998) (6) KTR 118 SC), for the period prior to the date of the decision. The same facility is not given to the producers/manufacturers. That only means the State Government has treated the unequals unequally. In view of that, it cannot be said that the said exemption notification is hit by Article 14 of the Constitution of India. In that view of the matter, we are of the considered opinion that the notification so issued by the State Government can neither be called arbitrary nor discriminatory.

(8). In view of the above discussion, the reliefs sought for by the petitioner in this original petition cannot be granted by this court. Accordingly, the original petition requires to be rejected and it is rejected.

(9). In view of the order passed in the original petition, all pending civil miscellaneous petitions are rejected.

Ordered accordingly.

(H.L.DATTU)
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

MS/dk